

Application No.: 09/514,371

Docket No.: 00-VE22.07A

RECEIVED
CENTRAL FAX CENTER

APR 09 2007

REMARKS

Claims 1-22 and 28-37 are pending. Claims 23-27 have been canceled. In the Office Action dated August 18, 2006 ("Office Action"), all pending claims were rejected under 35 U.S.C. § 102(e) as allegedly anticipated by U.S. Patent Numbers 6,292,478 or 6,546,003 (hereinafter referred to as "Farris I" and "Farris II".) Claim 35 was also rejected under Section 102(e) as allegedly anticipated by U.S. Patent Number 6,243,373 ("Turock"). Further, claims 1, 6-7, 13-16, and 18-19 were rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Turock in view of U.S. 6,298,057 ("Guy"). Claims 8-10, 12, 20-21, and 28-29 were rejected under Section 103 as allegedly unpatentable over Turock in view of Guy and further in view of U.S. Patent Number 6,185,184 ("Mattaway"). Claim 30 was rejected under Section 103 as allegedly unpatentable over Turock in view of Mattaway. Claim 31 was rejected under Section 103 as allegedly unpatentable over Turock in view of Mattaway and further in view of Guy.

The Office Action (page 23) further stated that claims 2-5, 11, 17, 22, 32-34, and 37 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form. This statement plainly contradicts the foregoing rejection of these claims based on Farris I and Farris II. Therefore, Applicants respectfully submit that the Examiner should re-open prosecution to clarify the ambiguous record.

The Office Action followed the Supplemental Appeal Brief filed on December 7, 2004. In response to the Office Action, Applicants exercised their right to continue their appeal, and filed a Notice of Appeal on November 16, 2006. Applicants then determined that the presently pending claims were invented prior to Farris I and Farris II. Therefore, pursuant to 37 C.F.R. § 41.33(d)(1), Applicants herewith submit the attached the Declaration of Robert D. Farris ("Declaration"), made according to 37 C.F.R. § 1.131. The Declaration establishes that the present claims were conceived prior to Farris I and Farris II (¶¶ 6-7), and that Applicants exercised diligence between the time of conception and the time when the parent to the present application was filed on December 18, 1996 (¶¶ 8-9).

Regardless of whether prosecution is re-opened as urged above, the Examiner is respectfully requested to enter the Declaration into the record, inasmuch as it has been submitted prior to the filing of an Appeal Brief and would substantially narrow the issues for

Application No.: 09/514,371

Docket No.: 00-VE22.07A

appeal. See 41 C.F.R. § 41.33(d)(1). Further, Applicants respectfully urge that all rejections based on Farris I and Farris II should be withdrawn, based on the Declaration.

RECEIVED
CENTRAL FAX CENTER

APR 09 2007

CONCLUSION

It is believed that any fees associated with the filing of this paper are identified in an accompanying transmittal. However, if any additional fees are required, they may be charged to Deposit Account 18-0013, under Order No. 65632-0202, from which the undersigned is authorized to draw. To the extent necessary, a petition for extension of time under 37 C.F.R. 1.136(a) is hereby made, the fee for which should be charged against the aforementioned account.

Dated: April 9, 2007

Respectfully submitted,

By 

Charles A. Bieneman

Registration No.: 51,472

Glenn Forbis

Registration No.: 40,610

RADER, FISHMAN & GRAUER PLLC

Customer No. 25537

Attorneys for Appellant